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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 768

THE BOYS MARKETS, INC., *Petitioner,*

v.

RETAIL CLERKS UNION, LOCAL 770, *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS AMICUS CURIAE

INTEREST OF THE AMICUS CURIAE *

The Chamber of Commerce of the United States of America is a federation consisting of a membership of over 3,700 state and local chambers of commerce and

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* This brief is filed with the written consent of both parties pursuant to Supreme Court Rule 42 (2).

trade and professional associations, a direct business membership in excess of 38,000, and an underlying membership of approximately 5,000,000 business firms and individuals. It is the largest association of business and professional organizations in the United States.

This brief *amicus curiae* supports the position of the petitioner urging reversal of the decision below. The interest of the *amicus* is predicated upon the far-reaching significance of this case which will profoundly affect the continuing validity of the premise that "the basic policy of national labor legislation [is] to promote the arbitral process as a substitute for economic warfare." *Local 174, Teamsters* v. *Lucas Flour Co.*, 369 U.S. 95, 105 (1962). For that precept will be dangerously eroded, if not destroyed, if this Court rules, as did the court below, that *Sinclair Refining Company* v. *Atkinson*, 370 U.S. 195 (1962), can stand in the face of this Court's recent decision in *Avco Corp.* v. *Aero Lodge 735, I.A.M.*, 390 U.S. 557 (1968).

The vast majority of unionized employers rely upon the arbitral process, and correlative contractual promises not to strike, to insure vital labor stability during the term of their collective bargaining agreements. A study by the Bureau of National Affairs disclosed that 94% of union contracts contain some form of no-strike clause. Bureau of National Affairs, *Basic Patterns in Union Contracts*, 1964, p. 77:1. Employer reliance upon peaceful determination of contract disputes, however, often proves to have been misplaced. Work stoppages during a contract term, whose purpose and effect is rejection of the arbitral process as the agreed method for resolving labor disputes, remain

a substantial source of industrial strife.[1] The present case will determine whether employers have an effective means to preclude such work stoppages by securing injunctive relief against them, and whether, as a result, Congress accomplished its objective of promoting industrial peace by placing "sanctions behind agreements to arbitrate" (*Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448, 456 (1957)) and expanding the "availability of forums for the enforcement of contracts made by labor organizations." (*Chas. Dowd Box Co.* v. *Courtney,* 368 U.S. 502, 508-9 (1962)). For these reasons the case is a critical one warranting a presentation of the Chamber's view.[2]

ARGUMENT

I

Sinclair Cannot Stand in the Face of Avco

This Court's 1968 decision in *Avco* casts the *Sinclair* issue and the *Sinclair* decision in a wholly new light. *Avco* makes of *Sinclair*, whose result was said to be dictated by the intent of Congress, an instrument for defeating the clear congressional purpose of § 301 of the Labor Management Relations Act of 1947. That purpose was not to detract from state jurisdiction to

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[1] The latest figures of the U.S. Department of Labor, Bureau of Labor Statistics, indicate that during 1968, 1,585 work stoppages, or 31.4% of the total number of stoppages, involving over 724,000 workers, were stoppages that occurred during the term of agreements but not in connection with negotiations of new contracts. The workdays lost by such stoppages were a lesser percentage (9.9%) of the workdays lost by all stoppages. U. S. Department of Labor, Bureau of Labor Statistics, *Work Stoppages in 1968 (Selected Final Tabulations)*, June 1969, p. 5.

[2] For similar reasons the Chamber also submitted a brief *amicus curiae* in *Avco.*

remedy contract breaches that existed prior to § 301, but rather to supplement such traditional state jurisdiction with federal jurisdiction. *Chas. Dowd Box Co.* v. *Courtney,* 368 U.S. 502 (1962). Yet today unions confronted by a state court suit to enjoin a strike in breach of contract need only remove the suit to a federal court where, under *Avco,* remand may not be had and where, under *Sinclair,* no injunction may issue. Thus *Sinclair,* with the advent of *Avco,* has effectively *eliminated* state court jurisdiction to enjoin strikes in breach of contract that not only existed prior to *Sinclair* but existed also after *Sinclair,* and until *Avco;* in federal jurisdictions that permitted remand after removal. *American Dredging Co.* v. *Local 25, Operating Engineers,* 338 F.2d 837 (3d. Cir. 1964), *cert. denied,* 380 U.S. 935 (1965). If any state court jurisdiction to enjoin strikes in breach of contract now remains it is theoretical only, and thus without utility and without substance.

The destruction of state court jurisdiction to enjoin strikes in breach of contract which resulted from *Sinclair* coupled with *Avco* is diametrically contrary to the "explicit evidence that [in enacting § 301] Congress expressly intended not to encroach upon the existing jurisdiction of the state courts." *Dowd Box,* 368 U.S. at 509. *Dowd Box,* which analyzes the legislative history of § 301 at great length, compels the conclusion that Congress, by giving the federal courts jurisdiction in collective bargaining contract cases and in the process imposing upon the state and federal courts the duty of fashioning federal law to promote the fair and peaceful administration of those contracts, had in mind not at all to take away from the state courts any of the jurisdiction they already possessed to carry out

that purpose, including the jurisdiction to enjoin strikes in breach of contract. Congress intended to *add* to the means of carrying out that purpose by giving jurisdiction to the federal courts in order to fill a jurisdictional gap which existed in some state courts, so that unions and employees would nowhere be immune from judicial review and enforcement of their obligations under collective bargaining contracts. "Section 301 . . . had as its *most articulate purpose* the *supplementing* of state remedies." Summers, *Labor Law Decisions of Supreme Court, 1961 Term,* ABA Section of Labor Relations Law Proceedings, 51, 63 (1962). (Emphasis added). See also the collation of the legislative history attached as an appendix to Justice Frankfurter's dissent in *Lincoln Mills,* 353 U.S. at 485-556, which similarly puts beyond the realm of doubt this reading of the congressional purpose.

In *McCarroll* v. *Los Angeles County District Council of Carpenters,* 49 Cal. 2d 45, 315 P. 2d. 322 (1958), *cert. denied,* 355 U.S. 932 (1958), Justice Traynor said:

> "We would give altogether too ironic a twist to this purpose if we held that the actual effect of the legislation was to abolish in state courts equitable remedies that had been available, and leave an employer in a worse position in respect to the effective enforcement of his contract than he was before the enactment of section 301."

Sinclair, however, now that *Avco* has ruled that § 301 suits removed from state courts cannot be remanded, has led to just that ironic result. Its effect has been to stand upon its head the clear congressional purpose to support not undercut arbitration, and to supplement not undercut state court jurisdiction. Arguments that this unlooked-for result must have been the true con-

gressional intent after all, or that the fact that the intent of Congress has been thus perverted is "irrelevant,"[3] are not persuasive, to say the least. The only way to correct the misapplication of congressional intent which is embodied in *Sinclair* and that has now been exposed by *Avco* is for *Sinclair* to be overruled.[4]

II

Section 301 Authorizes Injunctions Against Strikes in Breach of Contract

The *Avco* decision places the capstone of unanswerable persuasiveness on Justice Brennan's dissent in *Sinclair*. The dissent amply demonstrates why it is erroneous to read § 301 as drawing up short just before the point where it would effectively validate the union side of the agreement to arbitrate. The dissent ascribes to § 301 the full, substantive content of effectuation of

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[3] Dunau, *Three Problems in Labor Arbitration*, 55 Va. L. Rev. 427, 468-473 (1969).

[4] Note 4 of the *Avco* opinion raises the possibility that state court jurisdiction to enjoin strikes in breach of contract may retain content, despite *Avco* and even if *Sinclair* is reaffirmed, if federal district courts are not required to dissolve state court injunctions that had been issued prior to removal. The distinction between the absence of original jurisdiction to issue an injunction and the jurisdiction necessary to enforce another court's injunction presents serious theoretical problems. The distinction is called "fanciful" and a "juridical absurdity" in Dunau, *op. cit.*, 55 Va. L. Rev. at 472, n. 122. In addition such a distinction, if adopted, would tend to make the availability of injunctive relief depend on nothing more than the relative speed with which opposing lawyers and the state court act. Permission to federal courts not to dissolve state court injunctions would prove to have practical utility in only a few cases. Although this would at least be preferable to complete elimination of the state court jurisdiction to enjoin strikes in breach of contract that has so long existed, we reiterate that the proper solution to the dilemma caused by *Avco cum Sinclair* is the overruling of *Sinclair*.

the national labor policy favoring arbitration that *Lincoln Mills* and all the Supreme Court § 301 cases that came after *Lincoln Mills,* with the exception of *Sinclair,* have ascribed to it.

No semantic legerdemain can reconcile the congressional desire to achieve industrial peace through effective enforcement of collective bargaining agreements with restricting § 301 to a one-way street that fails to provide meaningful enforcement of union contractual obligations. Moreover, a reading of § 301 which fails to give credence to the union's commitment to arbitrate rather than strike does violence to its language. "There is nothing in the words of § 301 which so much as intimates any limitation to damage remedies when the asserted breach of contract consists of concerted activity . . . Taking the language alone, the irresistible implication would be that the District Courts were to employ their regular arsenal of remedies appropriately to the situation. That would mean, of course, that injunctive relief could be afforded when damages would not be an adequate remedy." *Sinclair,* 370 U.S. at 220 (dissenting opinion). The thrust of § 301 is surely not to invoke a double standard where, in those "suits for violation of contracts" in which unions are defendants, the courts are restricted to ineffectual remedies destructive of arbitration. Rather than cause such a "severe dislocation in the federal scheme of arbitration of labor disputes" (*International Longshoremen's Ass'n* v. *Philadelphia Marine Trade Ass'n.,* 389 U.S. 64, 77 (1967) (concurring and dissenting opinion)), Congress intended that the Norris-LaGuardia Act should be accommodated to § 301 to the limited extent necessary to permit injunctions against strikes in breach of contract.

Congress, in enacting § 301, clearly recognized that a strike over an arbitrable grievance is totally at odds with the paramount congressional policy of substituting the arbitral process for economic warfare by "promoting collective bargaining that ended with agreements not to strike." *Lincoln Mills,* 353 U.S. at 453. The expressed federal policy was that "collective bargaining contracts were made 'equally binding and enforceable on *both* parties'. . . that federal courts should enforce these agreements on behalf of *or against* labor organizations and that industrial peace can be best obtained only in that way." 353 U.S. at 454-5. (Emphasis added). *Dowd Box* strongly reiterated this dominant congressional theme (368 U.S. at 509):

> "The Labor Management Relations Act of 1947 represented a far-reaching and many-faceted legislative effort to promote the achievement of industrial peace through encouragement and refinement of the collective bargaining process. It was recognized from the outset that such an effort would be purposeless unless both parties to a collective bargaining agreement could have reasonable assurance that the contract they had negotiated would be honored. Section 301(a) reflects congressional recognition of the vital importance of assuring the enforceability of such agreements."

The compelling need for mutual enforcement of labor contracts—for enforcing not only the obligation of the employer to arbitrate but the *quid pro quo* negative covenant of the union not to strike—was also underscored in the § 301 Senate Report quoted by the Court in *Lincoln Mills* (353 U.S. at 454):

> "If unions can break agreements with relative impunity, then such agreements do not tend to stabilize industrial relations. The execution of an

> agreement does not by itself promote industrial peace. The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract."

Significantly, Congress in § 301 did not limit the right to pursue "suits for violation of contracts" to recovery of only "damages . . . sustained and the cost of the suit," as it did in § 303 in providing for actions by those injured by secondary boycotts. The logical implication is that Congress fully appreciated the overriding necessity of equitable enforcement of *contractual* promises freely entered into by both parties, which created no real threat to their legitimate interests, as contrasted with the dangers of resurrecting injunctions as part of a *tort* remedy in the boycott area running against unions only. Thus, "Section 302 of the House bill, the substantial equivalent of the present § 301," was described in the debates as "the section dealing with equal responsibility under collective bargaining contracts in strike actions and proceedings in district courts" which "contemplates not only the ordinary lawsuits for damages but also such other remedial proceedings, both legal and equitable, as might be appropriate in the circumstances." 353 U.S. at 455-6.

Sinclair denigrates these carefully considered policies and distinctions and, indeed, the whole substance of § 301. It asserts that Congress committed a fatal error when it sought to enforce mutual assurances of freedom from economic warfare for the contractual term, *i.e.*, it failed *expressly* to modify the Norris-La-

Guardia Act. This argument is well answered in the dissent in *Sinclair* which points out, *inter alia,* that *Lincoln Mills, Brotherhood of Railroad Trainmen* v. *Chicago River & I. R. Co.,* 353 U.S. 30 (1957), and the fair representation cases (*e.g., Syres* v. *Oil Workers International Union,* 350 U.S. 892 (1955); *Graham* v. *Brotherhood of Locomotive Firemen,* 338 U.S. 232 (1949)) all afforded injunctive relief in labor disputes despite the absence in the applicable statutes of an explicit repealer *pro tanto* of Norris-LaGuardia.[5] Moreover, a critical presupposition upon which the contention of the need for an explicit repealer is founded is that enjoining breach of contract strikes arising from arbitrable grievances was, in fact, "a part and parcel of the abuses against which the [Norris-LaGuardia] Act was aimed." *Lincoln Mills,* 353 U.S. at 458. But this presupposition is precisely what was rejected by Congress when it differentiated the remedies available in § 301 suits from those provided for in § 303 secondary boycott suits. The basis for such distinction is evident:

> "[T]he reasons behind the Norris-LaGuardia Act seem scarcely applicable to [Section 301] . . . The Act was passed primarily because of widespread dissatisfaction with the tendency of judges to en-

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[5] The critical rationale of *Chicago River,* which is particularly apropos to the instant case, was that there is a "need to accommodate two statutes, when both were adopted as a part of a pattern of labor legislation". Thus, notwithstanding the absence of any express repealer of Norris-LaGuardia in the "minor dispute" section of the Railway Labor Act, the Court held: ". . . that the Norris-LaGuardia Act cannot be read alone in matters dealing with railway labor disputes. There must be an accommodation of that statute and the Railway Labor Act so that the obvious purpose in the enactment of each is preserved. We think that the purposes of these Acts are reconcilable." (353 U.S. at 40, 42).

join concerted activities in accordance with 'doctrines of tort law which made the lawfulness of a strike depend upon judicial views of social and economic policy.' Where an injunction is used against a strike in breach of contract, the union is not subjected in this fashion to judicially created limitations on its freedom of action but is simply compelled to comply with limitations to which it has previously agreed. Moreover, where the underlying dispute is arbitrable, the union is not deprived of any practicable means of pressing its claim but is only required to submit the dispute to the impartial tribunal that it has agreed to establish for this purpose." *Report of the Neutral Members, Special Atkinson-Sinclair Committee,* in ABA Section of Labor Relations Law Proceedings, Part II, 226, 242 (1964).

In sum, equitable validation of union no-strike pledges would do no violence to the root purpose of the Norris-LaGuardia Act, which was to prevent injunctive interference with union efforts to obtain recognition and contracts rather than to insulate unions from their duty to live up to their obligations under contracts once obtained.[6] Conversely, failure to validate such

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[6] See Stewart, *No Strike Clauses in the Federal Courts,* 59 Mich. L. Rev. 674, 676-8 (1961). This conclusion is buttressed by Frankfurter and Greene's classic study, The Labor Injunction (1930). This study, and the subsequent congressional debates preceding enactment of the Norris-LaGuardia Act, are distinctly free of criticism of injunctions against strikes in breach of contract. See Witte, *The Federal Anti-Injunction Act,* 16 Minn. L. Rev. 638 (1932). Moreover, only three of the 116 reported federal labor injunction cases compiled by Frankfurter and Greene (Appendix I), whose factual situation is disclosed in the designated federal reports, can be said to have in any way involved such a strike. (*Portland Terminal Co.* v. *Foss* (No. 41); *Kinlock Tel. Co.* v. *Local Union No. 2* (No. 53); and *A. R. Barnes & Co.* v. *Berry* (No. 94)).

obligations cannot be squared with the purposes of § 301 as this Court has uncovered them in *Lincoln Mills* and its progeny. Our arguments are thus not an appeal for changing the law that should be addressed to Congress; they are an appeal to the Court to carry where logic, fairness and consistency commands its prior conclusions about the congressional intent that underlies § 301.

III

Policy Considerations Affirm, Rather Than Negate, Congressional Authorization of Injunctions Against Strikes in Breach of Contract

The defenders of *Sinclair,* in addition to imputing a talismanic effect to the absence of an express modification of Norris-LaGuardia in § 301, also invoke various "policy" arguments for their position. They argue that breach of contract strikes involve only a "minor" problem, not "worth the substantial risk of abuse" that permission to enjoin them "may create", and which can be adequately met absent resort to equitable relief by "an arsenal of remedies available for the enforcement of contracts". Dunau, *op. cit.,* 55 Va. L. Rev. at 465-7; Bartosic, *Injunctions and Section 301: The Patchwork of Avco and Philadelphia Marine on the Fabric of National Labor Policy,* 69 Col. L. Rev. 980, 1000-1 (1969).[7] These arguments are both er-

[7] It is also argued that since many strikes in breach of contract are "wildcat" in character, i.e., not authorized by the bargaining representative, enjoining such conduct is of "uncertain practical use." Dunau, *op. cit.,* 55 Va. L. Rev. at 465; *Report of the Labor Union Members, Special Atkinson-Sinclair Committee,* in ABA Section of Labor Relations Law 1963 Proceedings, Part II, 226, 233 (1964). On the contrary, there is no basis to assert that an injunction against a wildcat strike is any less effective than other strike injunctions. An injunction against a wildcat strike benefits not only the employer but also the union and those employees who, while unsympathetic to the strikers' desire to short-circuit the arbi-

roneous and beside the point. As demonstrated above, Congress had no intention to deprive courts of their right to apply appropriate equitable remedies in § 301 "suits for violation of contracts" against unions. Nor did Congress intend, as these arguments imply, that a promise not to strike should be treated as something less than or other than a promise not to strike, or that unions should justifiably be any less committed to fulfillment of their contractual pledges than employers.

Furthermore, the policy considerations raised by the defenders of *Sinclair,* when properly viewed, only serve to confirm the wisdom of the congressional choice to permit injunctions against strikes in breach of contract. *First,* strikes in breach of contract are not a "minor" problem, either viewed in the context of their impact on the nation's industrial life, see n. 1, *supra,* or in the context of a particular strike which can be, and often is, enormously costly and disruptive for the company and its employees alike. Moreover, there is no evidence that Congress differentiated between the remedies available for contract breaches depending upon subjective evaluations of whether they are "major" or "minor."

Second, the argument that Congress could not have intended to authorize injunctions against strikes in

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tration process, nevertheless do not want to cross a picket line. In a typical wildcat strike, a few pickets, unmoved by union or company exhortations, close down a plant at great cost to both the company and its employees. Such pickets can only be effectively removed, and prevented from recongregating, by court order. See *Armco Steel Corp.* v. *Perkins,* 411 S.W. 2d 937, 64 LRRM 2439 (Ky. Ct. App., 1967). Injunctive relief thus materially assists the union in discharging its contractual no-strike obligations and reasserting its position as the exclusive bargaining agent by placing judicial sanctions behind union and company efforts to terminate the strike.

breach of contract because discipline and damages are adequate alternative remedies is likewise unpersuasive. Both discipline and damages are "patently a miserable substitute for performance." Rice, *A Paradox of Our National Labor Law,* 34 Marquette L. Rev. 233, 253 (1951). Neither provides a practical, efficient source of relief. Discharge or discipline of strikers is as likely to prolong the strike as to end it, and is often inexpedient because of the absence of qualified replacements and the adverse future employment relationships occasioned thereby. Damage actions are similarly inadequate: (1) damages are always difficult, if not impossible, to prove and the "lost orders, customers and goodwill which result from such work interruptions constitute an irreparable injury to the employer which cannot be adequately compensated for in monetary damages" (*Report of the Management Members, Special Atkinson-Sinclair Committee,* in ABA Section of Labor Relations Law 1963 Proceedings, Part II, 226, 229-30 (1964); *United Textile Workers of America, Local 120* v. *Newberry Mills Inc.,* 366 F. Supp. 366, 372 (W.D.S.C., 1965)); (2) "unions, in many cases, are willing to risk a difficult-to-calculate damage action tried years later to the vagaries of a jury for the immediate gains which might be secured by strike action, even though in violation of contract" (*Report of the Management Members, op. cit.,* 1963 Proceedings at 229); and (3) as a practical matter, employers will always be reluctant to pursue post-strike damage actions which constitute a festering source of exacerbation of union relations and which unions invariably insist must be dismissed as a *sine qua non* of future amicable collective bargaining. In sum, as Congress was well aware, the only practical way to carry out a promise not to strike is not to strike, and the only

practical way to enforce the promise is to stop the strike. No other remedy suffices.

Third, the specter of perplexing questions of contract interpretation and of potential abuses of authority to issue injunctions against breach of contract strikes is a mirage. Whatever the violation alleged, whoever alleges it, and whatever the relief sought in a § 301 suit, questions of contract interpretation, sometimes complex and sometimes not, will arise for court decision. There is no basis, historical or otherwise, for the assertion that the courts are incompetent to deal with these questions or to determine accurately, in the occasional case where the issue is seriously contested and difficult, whether or not a strike is in breach of contract. And there is ample authority in this Court, supported by Rule 65 of the Federal Rules of Civil Procedure, to lay down any ground rules necessary to prevent abuses. See the dissent in *Sinclair,* 370 U.S. at 228-9, and *International Longshoremen's Ass'n* v. *Philadelphia Marine Trade Ass'n,* 389 U.S. 64 (1967). There is similarly no reason to disparage state court involvement in these matters. *Dowd Box* exemplifies the trust of Congress and this Court that the state courts will, within the limits of federal substantive law and subject now to removal to the federal courts under *Avco,* responsibly exercise the concurrent jurisdiction bestowed on them to hear and decide suits for breach of contract, just as they now responsibly exercise concurrent jurisdiction in cases involving strike violence and related conduct (e.g., *UAW* v. *Wisconsin ERB,* 351 U.S. 266 (1956); *Youngdahl* v. *Rainfair, Inc.,* 355 U.S. 121 (1957)). As pointed out in *McCarroll* v. *Los Angeles District Council of Carpenters, supra,* ". . . federal courts are no more expert than state courts in the interpretation of contracts."

Finally, the defenders of *Sinclair* concede that Norris-LaGuardia and § 301 must be accommodated after all, to permit the courts (a) to enjoin strikes in defiance of cease and desist arbitral awards against breach of contract strikes and (b) to enjoin strikes in opposition to arbitrators' awards on the merits of grievances. Dunau, *op. cit.*, 55 Va. L. Rev. at 473-77; Bartosic, *op. cit.*, 69 Col. L. Rev. at 1011-17. See, *New Orleans Steamship Ass'n* v. *ILA Local 1418*, 389 F.2d 369 (5th Cir.), *cert. denied*, 393 U.S. 828 (1968); *Philadelphia Marine Trade Ass'n* v. *ILA Local* 1291, 365 F.2d 295, 368 F.2d 932 (1966), *reversed*, 389 U.S. 64 (1967). This concession constitutes a candid admission that *Avco* coupled with *Sinclair* results in frustration of the congressional intent underlying § 301. It is a retreat to new ground to set up a new line of defense for *Sinclair*. In fact there is no essential difference between the rationale of this concession and the position taken by the dissenters in *Sinclair*, for they both support nothing more or less than injunctions issued by courts against strikes in breach of contract, in order to uphold the purpose of § 301 to assure the viability and integrity of the arbitration process.[8] A court injunction issued prior to

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[8] With the dissent in *Sinclair*, compare the following statements in Dunau, *op. cit.*, 55 Va. L. Rev. at 474, 477:

> "The decree [enjoining the strike] will clearly clash with the words of section 4(a) of the Norris-LaGuardia Act. But it is axiomatic that statutory interpretation, while it indispensably begins with statutory words, cannot stop there. Further inquiry is essential to ascertain whether the literal reading fits the rationale of the Norris-LaGuardia Act and LMRA section 301."
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> • • •
>
> "Where two statutory directives collide, a solution which reconciles both is to be preferred to a result which wholly sacrifices either."

an arbitrator's award in order to prevent a strike in defiance of the arbitration process upholds the arbitration principle not one whit less, and is no less proper under § 301, than a court injunction to prevent defiance of an award.

Moreover, the proposed post-award strike injunctions, which may appear on first blush to be an attractive compromise to make the *Avco-Sinclair* distortion of § 301 palatable, will seldom have that effect. The banner of arbitration is little advanced if the relatively rare case in which there is a strike against an arbitrator's award can be reached by a court injunction while the frequent case in which the strike seeks to avoid arbitration altogether cannot be reached. Additionally, the suggested rule that courts be permitted to enjoin a pre-arbitration strike only after an arbitrator has ruled on it will be of little practical value. Very few collective bargaining contracts provide—and few companies and unions are in a position to provide—for the kind of instantaneous choice and advent of an arbitrator that would be required to give the suggestion any significant practical content. Thus a ruling that an arbitrator's cease and desist order must precede a court injunction would require the renegotiation of many thousands—almost all—of the country's no strike/arbitration agreements. Whether these negotiations could or would achieve the desired results is highly problematical. Congress cannot be supposed to have intended that such negotiations should precede the effectuation of § 301.

CONCLUSION

For the reasons stated herein, as well as those presented by the petitioner and the dissent in *Sinclair,* the decision of this Court in *Sinclair* should be overruled, and the decision of the court below should be reversed.

Respectfully submitted,

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